

PACIFIC COAST MINES, INC.

IBLA 80-748

Decided March 17, 1981

Appeal from decision of the Nevada State Office, Bureau of Land Management, declaring the Maria group 1 through 45 lode mining claims abandoned and void. N MC 48355-48399.

Affirmed in part; reversed and remanded in part.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where the owner of an unpatented mining claim located after Oct. 21, 1976, in the calendar year 1978, fails to file an affidavit of assessment work or notice of intention to hold the claim on or before Dec. 30, 1979, the calendar year following the calendar year in which the claim was located, the claim is properly and conclusively deemed to have been abandoned and to be void.

2. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

A notice of intention to hold a mining claim is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. Sec. 314(a)(1) and (2), Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3 (a)(1). Where it is clear from the text of appellants' purported notice of intention to hold that this document was not filed in the local offices of the State of Nevada, it is without legal significance.

APPEARANCES: Robert L. Starkey, Esq., General Counsel of Pacific Coast Mines, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Pacific Coast Mines, Inc., has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated June 25, 1980, which declared the Maria 1 through 45 lode mining claims abandoned and void for failure to file notice of intent or evidence of assessment work with BLM on or before December 30, 1979, as required by 43 CFR 3833.2-1.

The record shows that the Maria lode claims were located in December of 1978 and January of 1979. <sup>1/</sup> All the claims were recorded with BLM on January 24, 1979.

Appellant contends that for the group of 12 claims located in 1979 (Maria 19 through 24, 34 through 36, and 37 through 39), the notice of intent to hold was not due by December 31, 1979. It points out that this group of claims was inadvertently included in its attempted listing of notice to hold claims by its land agent. As to these particular claims we agree the documents were not required to be filed in 1979. Appellant had until December 31, 1980, in order to satisfy the requirements of the law.

[1] Section 314(a)(1) and (2) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a)(1) and (2) (1976), and the pertinent regulation, 43 CFR 3833.2-1(a), require that the owner of an unpatented mining claim located after October 21, 1976, shall prior to December 31 of each year following the calendar year in which the claim was located, file with BLM evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim. Failure to file the required instrument is conclusively deemed to constitute an abandonment of the mining claim under section 314(c) of FLPMA, 43 U.S.C. § 1744(c) (1976),

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<sup>1/</sup> The claims and the dates involved are as follows:

<u>DATE OF LOCATION</u>	<u>DATE OF FILING</u>	<u>NAME OF CLAIM</u>	<u>N MC NUMBER</u>
December 21, 1978	January 24, 1979	Maria #1-9	48355-48363
December 20, 1978	January 24, 1979	Maria #10	48364
December 21, 1978	January 24, 1979	Maria #11-18	48365-48372
January 6, 1979	January 24, 1979	Maria #19-24	48373-48378
December 20, 1978	January 24, 1979	Maria #25-33	48379-48387
January 8, 1979	January 24, 1979	Maria #34-36	48388-48390
January 3, 1979	January 24, 1979	Maria #37-39	48391-48393
December 20, 1978	January 24, 1979	Maria #40-45	48394-48399

and 43 CFR 3833.4(a). Therefore, these designated Maria claims located in 1979 were prematurely declared abandoned and void and should be reinstated for the calendar year 1980.

As to the Maria claims located in 1978, appellants failed to file timely either an affidavit of assessment work or a notice of intention to hold the mining claims. BLM properly held these claims to have been abandoned and declared them void. Robert R. Eisenman, 50 IBLA 145 (1980); Geomet Exploration, Inc., 47 IBLA 135 (1980); Northwest Mining & Mercantile, Inc., 46 IBLA 360 (1980); Willene Minnier, 45 IBLA 1 (1980); Juan Munoz, 39 IBLA 72 (1979); Donald H. Little, 37 IBLA 1 (1978). The procedures established pursuant to section 314 of FLPMA, supra, are mandatory and may not be waived. Thomas F. Byron, 52 IBLA 49 (1981).

Appellant contends that a document which it terms "intention to hold the Maria 1 through 45 unpatented mining claims" was deposited in the mail by its land agent, David W. Schneider, on December 19, 1979, and was actually received in the Nevada State Office prior to December 31, 1979. There is no evidence in the BLM record to substantiate that this document was timely filed with BLM. Appellant has submitted a copy of this notice and an affidavit from its land agent that he received verbal confirmation by telephone that it had been timely filed. 2/

[2] In any event, we find that this letter failed to comply with the requirements of the statute and regulations for a satisfactory notice of intention to hold a mining claim or group of mining claims in 43 CFR 3833.2-3. A notice of intention to hold is required to be an exact copy of a document which was filed in the office of the state where the notice of location was filed. See section 314(a)(1) and (2), FLPMA, 43 U.S.C. § 1744(a)(1) and (2) (1976); 43 CFR 3833.2-3(a)(1). It is clear from the text of appellants' purported notice of intention to hold, (see n.2 supra) that the required document was not filed in the local office of the State of Nevada and thus is without legal significance.

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2/ Appellant's brief letter of December 19, 1979, to BLM signed by its land agent, Daniel W. Schneider, stated as follows:

"Attention: Mining Records

"Dear Recorder:

"This is to advise you of Pacific Coast Mines Inc., 'intention to hold' the Maria 1 through Maria 45 unpatented mining claims located in Section 11, 12, 13, 14, 23 & 24, T17N, R34E, Churchill County, Nevada. Our B.L.M. Parent Serial Numbers are N.M.C. 48355 through 48399.

"Have a Happy Holiday Season!"

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part and reversed in part and remanded to BLM for further action as to the 12 Maria claims located in 1979.

Anne Poindexter Lewis  
Administrative Judge

We concur:

Bernard V. Parrette  
Chief Administrative Judge

James L. Burski  
Administrative Judge

